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Error to Corporation Court of Lynchburg.

Heywood Fortune was convicted of murder in the second degree, and he brings error. Reversed, and new trial granted.

*Aubrey E. Strobe*, of Lynchburg, for plaintiff in error.

*John R. Saunders, Atty. Gen.*, for the Commonwealth.

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HINES, Director General of Railroads *v.* GRAVINS.

June 15, 1922.

[112 S. E. 869.]

**1. Libel and Slander (§ 6 (2)\*)—Charge Plaintiff Connived in Theft of His Property from Railroad Is Slanderous.**—An oral statement which, as explained by the inducement, colloquium, and innuendoes, charged that plaintiff sent the man who stole eggs consigned to plaintiff from the railroad car and had him bring the eggs to plaintiff's store, and that plaintiff thereafter made claim for the same eggs from the carrier, constituted common-law slander.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 255.]

**2. Libel and Slander (§ 24\*)—Proof of Publication Is Necessary to Recovery for Slander.**—To sustain a recovery for slander at common law, it is necessary that there be a publication, so that a verdict for plaintiff cannot be sustained where no one besides the plaintiff heard the alleged slanderous remark.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 266.]

**3. Libel and Slander (§ 24\*)—Publication Unnecessary to Sustain Action for Insulting Words.**—To sustain recovery under Code 1919, § 5781, for the utterance of insulting words tending to violence and breach of the peace, it is not essential that plaintiff prove a publication of the words, but it is sufficient if they were uttered in the presence of the plaintiff alone.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 266.]

**4. Corporations (§ 423\*)—Railroad Corporation Is Liable for a Slander Uttered by Agent within Scope of Authority.**—A railroad corporation is liable for slanderous words uttered by an agent while he was acting in the scope of his employment and in the actual performance of the duties of the corporation touching the matter in question.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 265.]

**5. Corporations (§ 423\*)—Agent of Railroad Held Acting within Scope of Authority in Uttering Defamation.**—Where the general agent of a railroad company whose subordinate was charged with the duty of issuing to a shipper shortage tickets, in discussing with plaintiff the latter's claim for shortage in a shipment of eggs, charged the plaintiff with having connived in the theft of the eggs, the agent in making a

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

charge was acting within the scope of his authority so as to render the principal liable.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 265.]

**6. Railroads (§ 5½\*), New, Vol. 6A Key-No. Series—Director General Liable for Compensatory Damages for Slander by Agent.**—Under Federal Control Act, § 10, and the general order promulgated by the Director General of Railroads, the Director General is liable for compensatory damages in an action for slander uttered by an agent within the scope of his authority under circumstances which would render the railroad corporation liable except for federal control.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 265.]

**7. Railroads (§ 5½\*), New Vol. 6A Key-No. Series—Director General Not Liable for Exemplary Damages.**—The Director General is not liable for exemplary damages in an action for the slander uttered by an agent, since the Federal Control Act (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, §§ 3115¾a-3115¾p) did not consent to suits against the United States except for compensatory damages.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 283.]

**8. Libel and Slander (§ 120 (1)\*)—Principal Is Not Liable for Exemplary Damages unless He Authorized or Ratified the Slander.**—Punitive damages cannot be recovered against a principal for slander uttered by one of his agents unless he either authorized or directed the utterance by the agent, or after knowledge thereof has ratified and approved it.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 283.]

**9. Railroads (§ 5½\*), New, Vol. 6A Key-No. Series—Director General's Ratification of Insult by Agent Held Not Shown.**—Evidence held not to show ratification by the Director General of insulting words uttered by the agent by defending a suit brought against the Director General therefor.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 280.]

**10. Appeal and Error (§ 1175 (1)\*)—As Principal Is Not Liable for Unauthorized Insult Spoken by Agent without Proof of Actual Damages, Appellate Court Held Authorized to Enter Judgment.**—The right of action given by Code 1919, § 5781, for the utterance of insulting words, which was intended to prevent personal encounters and breaches of the peace, does not authorize recovery of punitive damages from the principal, whose agent spoke the insulting words, in the absence of any proof of actual damages, so that a judgment for the principal can be rendered by the Supreme Court of Appeals under Code 1919, § 6365, even though the evidence would have sustained a recovery for punitive damages in a suit against the agent.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 283.]

Error to Hustings Court of Richmond.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Action by W. F. Gravins against Walker D. Hines, as Director General of Railroads, operating the Chesapeake & Ohio Railroad. Judgment for the plaintiff, and defendant brings error. Reversed, and final judgment rendered for defendant.

*D. H. & Walter Leake* and *Sherlock Bronson*, all of Richmond, for plaintiff in error.

*Bethel & Williams* and *M. J. Fulton*, all of Richmond, for defendant in error.

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CAMPBELL COUNTY *v.* HOWARD et al.

June 15, 1922.

[112 S. E. 876.]

**1. Attorney and Client (§ 140\*)—Measure of Compensation Is Reasonable Value of Services in Themselves and Not Benefits to Client.**—The measure of compensation to which attorneys are entitled, for services rendered under an employment not fixing a definite compensation, is the reasonable value of the services rendered in themselves, and not the benefits to the client, though the results secured may be considered as bearing upon the efficiency of the services and thus upon their value on a quantum meruit.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

**2. Attorney and Client (§ 140\*)—Matters to Be Considered in Fixing Compensation Stated.**—In determining the compensation recoverable by attorneys for services rendered under an employment fixing no definite compensation, the amount and character of the services, the responsibility imposed, the labor, time, and trouble involved, the character and importance of the matter in which they were rendered, the amount of money or the value of property affected, the professional skill and experience called for, the character and standing of the attorneys in their profession, and whether or not the fee is absolute or contingent, are to be considered.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

**3. Appeal and Error (§ 1068 (4)\*)—Error in Instruction as to Measure of Attorneys' Compensation Harmless, Where Amount Fixed Was Only Reasonable Compensation.**—Instructions erroneously permitting the jury to measure the compensation of attorneys for services rendered a county by the benefits received by the county were harmless, where there was ample evidence to sustain the verdict on a quantum meruit and the compensation fixed by the verdict was only reasonable compensation on a quantum meruit.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

**4. Attorney and Client (§ 167 (3)\*)—Instruction Permitting Different Measure of Compensation than That Fixed by Contract Erroneous.**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.